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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OUR CHILDREN'S EARTH FOUNDATION, a
non-profit corporation,

Plaintiff,

v.

ANDREW WHEELER, in his official capacity
as Administrator of the United States
Environmental Protection Agency,

Defendant.

Civil Case No. 3:19-cv-7125-WHA

**SECOND STIPULATION TO MODIFY
CONSENT DECREE DEADLINE AND
PROPOSED ORDER**

Pursuant to Civil L.R. 6-1(b), 6-2, 7-12, and paragraph 11 of the Consent Decree (“Consent Decree”) entered in this case (Dkt. No. 32-1), Plaintiff, Our Children’s Earth Foundation, and defendants, the United States Environmental Protection Agency *et al.* (“EPA”), (together, “the Parties”) stipulate to further continue the deadline for the appropriate EPA official to sign either: (i) a final rule containing revisions to National Emissions Standard for Hazardous Air Pollutants (“NESHAP”) Subpart M under section 112(d)(6) of the Clean Air Act, 42 U.S.C. § 7412(d)(6); or (ii) a final determination under section 112(d)(6) not to revise NESHAP Subpart M, extending the deadline from June 1, 2023 to **February 1, 2024.**

On October 14, 2020, the Parties filed a motion to approve the Consent Decree to resolve claims Plaintiff brought against EPA. Dkt. No. 32. The Consent Decree included several deadlines where EPA (1) agreed to either review or revise New Source Performance Standards (“NSPS”) and NESHAPs governing a number of sources by dates certain and (2) agreed to sign either final rules or final determinations not to revise NSPSs and NESHAPs governing a number of sources by dates certain. *See* Consent Decree ¶¶ 2-8. The Court signed the Consent Decree on October 20, 2020. Dkt. No. 33.

Paragraph 11 of the Consent Decree provides that “[t]he deadlines set forth in Paragraphs 2–8 hereof may be modified only by: (a) written stipulation of the Parties with notice to the Court; or (b) the Court following motion of any party to this Consent Decree, pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the non-moving party.” Consent Decree ¶ 11.

Paragraph 8.b of the Consent Decree specifically establishes that “EPA shall sign either: (i) a final rule containing revisions [to the Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards NESHAP] Subpart M under section 112(d)(6) of the Act, 42 U.S.C. § 7412(d)(6); or (ii) a final determination under section 112(d)(6) not to revise NESHAP Subpart M” by no later than December 1, 2022. Consent Decree ¶ 8.b.

Invoking Paragraph 11 of the Consent Decree, on August 18, 2022, the Parties stipulated to continue the December 1, 2022 deadline to June 1, 2023, which was signed by the Court on August 19, 2022. Dkt. Nos. 41, 42. The Parties now stipulate to further continue the June 1, 2023 deadline to February 1, 2024.

1 The Parties agree that continuing the current June 1, 2023 deadline to February 1, 2024 for EPA
 2 to take final action as noted above is fair, reasonable, and in the public's interest. On December 14,
 3 2022, EPA published a revised risk determination under the Toxic Substances Control Act ("TSCA")
 4 with respect to Perchloroethylene ("PCE") concluding "that PCE, as a whole chemical substance,
 5 presents an unreasonable risk of injury to health when evaluated under its conditions of use." 87 Fed.
 6 Reg. 76481 (Dec. 14, 2022). Because TSCA requires EPA to promulgate a rule "to the extent necessary
 7 so that [the chemical substance] no longer presents such risk," 15 U.S.C. § 2605(a), EPA is now in the
 8 process of developing a TSCA regulation with respect to PCE. 87 Fed. Reg. at 76487. EPA anticipates
 9 publishing its proposed TSCA PCE regulation sometime this spring. *See* OMB, Office of Information
 10 and Regulatory Affairs, Perchloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances
 11 Control Act (TSCA), available at
 12 <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2070-AK84> (last accessed
 13 March 28, 2023). Because the forthcoming TSCA rule regulating PCE will likely impact how EPA will
 14 address a NESHAP amendment for PCE with respect to dry cleaning facilities, the Parties agree that
 15 EPA will need more time to consider what final action it will take and agree that an extension of the
 16 deadline to February 1, 2024 is reasonable.

17 The Parties have only sought one other modification with respect to deadlines set forth in the
 18 Consent Decree and EPA has met every other Consent Decree deadline thus far. *See* Consent Decree ¶¶
 19 2.a, 3.a, 4.a, 4.b, 5.a, 6.a, 6.b, 7.a, 7.b, 8.a.

20 THEREFORE, the Parties stipulate to and request that the Court enter an order continuing the
 21 existing deadline of June 1, 2023 for the appropriate EPA official to sign "either: (i) a final rule
 22 containing revisions to [to the Dry Cleaning Facilities: National Perchloroethylene Air Emission
 23 Standards NESHAP] Subpart M under section 112(d)(6) of the Act, 42 U.S.C. § 7412(d)(6); or (ii) a
 24 final determination under section 112(d)(6) not to revise NESHAP Subpart M" to **February 1, 2024**.

25 Respectfully submitted,

26 For Plaintiff:

27 /s/ Stuart Wilcox

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Dated: April 3, 2023

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Dated: April 3, 2023

PURSUANT TO STIPULATION, IT IS SO ORDERED this _____ day of _____, 2022

Hon. William Alsup
United States District Judge